

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNIE HEARD,

Plaintiff,

v.

SUPERIOR COURT OF CALIFORNIA, et  
al.,

Defendants.

No. 2:20-cv-01589-KJM-CKD

ORDER

Plaintiff is a county inmate proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account

exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

## **I. Screening Requirement**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

## **II. Allegations in the Complaint**

Plaintiff is challenging the “unclean/unsafe living conditions” at the Rio Consumnes

1 Correctional Center. ECF No. 1 at 3. Specifically, plaintiff contends that the C.D.C.  
2 recommendations to reduce the spread of COVID-19, including social distancing and the use of  
3 face masks, have not been followed at the local jail where plaintiff is an inmate. Id. Plaintiff  
4 tested negative for COVID-19, but was then transferred to a dorm where other inmates had not  
5 been tested. Id.

6 Named as defendants in this action are the Superior Court of California, the County of  
7 Sacramento, and the Rio Consumnes Correctional Center. ECF No. 1 at 1.

8 By way of relief, plaintiff seeks compensatory damages in the amount of one million  
9 dollars, his immediate release from custody, and an “overhaul of jail policies concerning the  
10 protection of inmates from the COVID-19 virus....” ECF No. 1 at 3.

### 11 **III. Legal Standards**

12 At the outset, it is not clear from the allegations in plaintiff’s complaint whether he is a  
13 pre-trial detainee or if he has been convicted and is serving his sentence at the Rio Consumnes  
14 Correctional Center. Plaintiff will be provided with the appropriate legal standards governing  
15 both situations.

#### 16 **A. Fourteenth Amendment Applicable to Pretrial Detainees**

17 Plaintiff is informed that a pretrial detainee’s right to safety arises from the Fourteenth  
18 Amendment. Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1067-1068 (9th Cir. 2016) (en  
19 banc). A prison official’s failure to protect a pretrial detainee is actionable if four conditions are  
20 met:

- 21 1. The defendant made an intentional decision with respect to the  
22 conditions under which the plaintiff was confined;
- 23 2. Those conditions put the plaintiff at substantial risk of suffering  
24 serious harm;
- 25 3. The defendant did not take reasonable available measures to abate  
26 that risk, even though a reasonable officer in the circumstances  
27 would have appreciated the high degree of risk involved—making  
the consequences of the defendant’s conduct obvious; and
- 28 4. By not taking such measures, the defendant caused the plaintiff’s  
injuries.

Id. at 1071. As to the third element, the defendant’s conduct must be objectively unreasonable.

1 Id.

2 **B. Eighth Amendment Applicable to Convicted Inmates**

3 If plaintiff has been convicted and sentenced, he may challenge his conditions of  
 4 confinement under the Eighth Amendment. Farmer v. Brennan, 511 U.S. 825 (1994). In order  
 5 for a prison official to be held liable for alleged unconstitutional conditions of confinement, the  
 6 prisoner must allege facts that satisfy a two-prong test. Peralta v. Dillard, 744 F.3d 1076, 1082  
 7 (9th Cir. 2014) (citing Farmer v. Brennan, 511 U.S. 825, 837 (1994)). The first prong is an  
 8 objective prong, which requires that the deprivation be “sufficiently serious.” Lemire v. Cal.  
 9 Dep’t of Corr. & Rehab., 726 F.3d 1062, 1074 (9th Cir. 2013) (citing Farmer, 511 U.S. at 834).  
 10 In order to be sufficiently serious, the prison official’s “act or omission must result in the denial  
 11 of the ‘minimal civilized measure of life’s necessities.” Lemire, 726 F.3d at 1074. The objective  
 12 prong is not satisfied in cases where prison officials provide prisoners with “adequate shelter,  
 13 food, clothing, sanitation, medical care, and personal safety.” Johnson v. Lewis, 217 F.3d 726,  
 14 731 (9th Cir. 2000) (quoting Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). “[R]outine  
 15 discomfort inherent in the prison setting” does not rise to the level of a constitutional violation.  
 16 Johnson v. Lewis, 217 F.3d at 732 (“[m]ore modest deprivations can also form the objective basis  
 17 of a violation, but only if such deprivations are lengthy or ongoing”). Rather, extreme  
 18 deprivations are required to make out a conditions of confinement claim, and only those  
 19 deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to  
 20 form the basis of an Eighth Amendment violation. Farmer, 511 U.S. at 834; Hudson v.  
 21 McMillian, 503 U.S. 1, 9 (1992). The circumstances, nature, and duration of the deprivations are  
 22 critical in determining whether the conditions complained of are grave enough to form the basis  
 23 of a viable Eighth Amendment claim. Johnson v. Lewis, 217 F.3d at 731.

24 The second prong of an Eighth Amendment violation focuses on the subjective intent of  
 25 the prison official. Peralta, 774 F.3d at 1082 (9th Cir. 2014) (citing Farmer, 511 U.S. at 837).  
 26 The deliberate indifference standard requires a showing that the prison official acted or failed to  
 27 act despite the prison official’s knowledge of a substantial risk of serious harm to the prisoner.  
 28 Id. (citing Farmer, 511 U.S. at 842); see also Redman v. Cnty. of San Diego, 942 F.2d 1435, 1439

(9th Cir. 1991). Mere negligence on the part of the prison official is not sufficient to establish liability. Farmer, 511 U.S. at 835.

### C. Linkage Requirement

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

### D. Municipal Policy or Custom

In order to state a claim against a local governmental entity or municipality, a plaintiff must allege that a specific “policy or custom” of the agency was the “moving force” for the challenged constitutional violation in deliberate indifference to plaintiff’s rights. Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978). Furthermore, a local governmental entity may not be liable based on a theory of respondeat superior liability due to the individual actions of its subordinate employees. Monell, 436 U.S. at 694.

### E. Habeas Versus § 1983 Action

Plaintiff has filed a § 1983 action seeking his immediate release from custody. However, when a state prisoner challenges the legality of his custody and the relief he seeks is the determination of his entitlement to an earlier or immediate release, his sole federal remedy is a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). A federal habeas corpus action is only available if plaintiff has been convicted and has exhausted his state court remedies. See 28 U.S.C. § 2254(b)(1)(A).

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**IV. Analysis**

Plaintiff names the Superior Court of California and the Rio Consumnes Correctional Center as defendants in this action. However, these are not proper defendants. The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution ... shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The correctional institution and the Sacramento Superior Court are not “persons” and therefore cannot be sued. The only other remaining defendant is the County of Sacramento. Plaintiff has not identified any specific county custom or policy that was the moving force for the unsafe jail conditions as required by Monell, 436 U.S. at 694. For all of these reasons, plaintiff’s complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

**V. Plain Language Summary for Pro Se Party**

The following information is meant to explain this order in plain English and is not intended as legal advice.

The court is dismissing your complaint because you are not suing a person as the Civil Rights Act requires, nor have you identified any county custom or policy that is responsible for the alleged constitutional violations. However, the court is giving you one opportunity to fix this problem. If you choose to do so, you may file an amended complaint within the time provided in this order.

In accordance with the above, IT IS HEREBY ORDERED that:

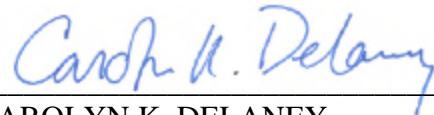
1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Sheriff of Sacramento County filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: August 25, 2020



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE